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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/090,743

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EXAMINER

ARAQUE JR, GERARDO

ART UNIT

PAPER NUMBER

3689

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/090,743	<b>Applicant(s)</b> YOSHIDA, TOMOKO	
	<b>Examiner</b> Gerardo Araque Jr.	<b>Art Unit</b> 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1 and 4 – 8** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant claims calculating the expected length of hair with the following formula:

Expected hair length = [Future hair cut date) – (Last hair cut date)], (Hair growth rate), (Length of hair from last hair cut date)

However, the Examiner asserts that the applicant has failed to provide sufficient guidance to properly calculate the expected hair length. That is to say, the applicant has only provided the information needed to calculate the expected hair length, but has failed to disclose how to use this information to calculate the expected hair length.

Further still, the Examiner asserts that the hair growth rate is not a constant, but a variable and, as a result, would not make it possible to calculate the expected hair length with the above formula (**see provided NPL About.com: Skin & Beauty**). As a

result, the applicant has failed to properly provide sufficient guidance to enable one to carry out the invention. That is to say, the above formula fails to provide the expected hair length and, as a result, would make it impossible to provide the intended hairstyle to the customer since the expected hair length is unknown.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 1 and 4 – 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Geerlingss (US Patent 6,073,112)** in view of **Amornisiripanitch (EP 1,068,861A1)** in further view of **Blancato (US Patent 4,823,285)**.

5. In regards to **claim 1**, **Geerlings** discloses, "...communication system of the present invention accounts for individual shopping behavior of the consumer and tailors the communication accordingly (with respect to content and timing (i.e., when to contact the consumer) (Column 1 Lines 51 – 56)." Moreover, "the dynamic or continual resegmentation of customers based on changes in shopping activity/behavior ensures that pertinent and timely communications are made (automated) by the present invention system (Column 3 Lines 40 – 43)." Furthermore, "...the present invention communication system automates preparation and transmission of written and/or verbal communications based on behavior (e.g., shopping activity) of customers (Column 3 Lines 16 – 20)."

**Geerlings** further discloses that the system, "...tailors the communication accordingly (with respect to content and timing (i.e., when to contact the consumer) (Column 1 Lines 54 – 56)." Moreover, the system determines the appropriate time to contact the individual based on, "...cumulative purchase behavior of a consumer, historic behavior or expected future behavior, or any combination thereof (Column 2 Lines 26 – 30)."

Further still, as best understood by the examiner, **Geerlings** also discloses that necessary information regarding the individual is stored in the database and is accessed when needed, such as retrieving the modified images of the individual that will be attached to the notification. Moreover, an "...Event History Subtable **26** is formed of records indicating the various so-called events **37**...with which a customer has been involved. That is, each record identifies (i) a customer by customer number, and (ii) an event **37c** by event number ("Event NR"). The event number serves as a cross reference to a record in the strategy database **21** where the event is predefined by the merchant. (Column 6 Lines 50 – 57).

**Geerlings** fails to disclose the system to be used for:

- visiting a hair salon;
- calculating the expected length of hair; and
- making a hairstyle match with images of a customer's face.

As it has been explained above, **Geerlings** discloses a system and method that allows for an effective means of communicating information to its customers based on stored customer information, regardless of the business (**Col. 3 L. 15 – 17**). That is to

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say, the flexibility of **Greerlings** method and system allows for any type of business to communicate relevant reminder information based on customer preferences, profile, and past information. For example, were the invention used in a mechanic shop it would have been obvious to one having ordinary skill in the art that there is specific information needed from the customer in order to provide relevant reminder information. Specifically, it is old and well known for vehicles to receive regular maintenance, such as tire rotation, oil change, and etc. As a result, the customer information stored would consist of, but not be limited to, vehicle mileage, date of last service, and normal frequency of service (oil change every 3,000-5,000 miles or 3 months). In regards to a salon, the Examiner asserts that **Greerlings** invention would perform the same function. Specifically, there are a variety of services that a salon performs on a regular basis, such as manicures, waxing, hair cuts, dyeing, and etc. All of these services are occurrences that a customer requests on a regular basis and may require reminders in order to maintain a specific dye color or hair length, for example. As a result, the customer information would consist of, but not be limited to, how often a customer visits the salon for basic cosmetic requests or for the maintenance of hair color or waxing.

Thus, for at least the above mentioned rationale, it is asserted that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the information stored in the database system of **Greerlings** in accordance with the type of business environment it is being used for in order to properly remind a customer of their next visit. One of ordinary skill in the art would have realized that depending on the type of business in which the invention of **Greerlings** is being applied to it would

have been obvious that the stored customer information would be information that is relevant to the type of business, vehicle information for a mechanic and hair information for a salon, for example.

However, **Greerlings** fails to explicitly disclose;

calculating the hair length of the expected next date of the hair cut, the number of days between the previous date of the haircut and the expected next date of visit, and the hair growth rate; and

making a hairstyle match with images of a customer's face.

**Amornisiripanitch** discloses a method and system in which hair length is calculated using a variety of type of information gathered from a user. Specifically, **Amornisiripanitch** discloses a method and system which analyzes, tabulates, and calculates the hair growth rate of an individual then determines the expected length based on a provided time gap. That is to say, **Amornisiripanitch** discloses that it is old and well known to calculate an expected hair length when the system and method is provided with the hair growth rate (calculated based on gathered information), the measured length (initial length), and the time gap (date of initial length measured and future measurement date). After all of this information is provided, the system and method then calculates the approximate expected hair length by using the maximum, the minimum, the mode, and the median of the whole area growth rate with standard deviation and variance, since it is old and well known that an individual's hair growth rate is not a constant value (**see at least Col. 4 Lines 27 – 47**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Greerlings** in view of **Amornisiripanitch** to provide and system and method of calculating an expected hair length of an individual in order to better provide up to date information to a customer and allow them to determine whether a hair cut is needed.

However, the **combination of Greerlings and Amornisiripanitch** fails to explicitly disclose:

making a hairstyle match with images of a customer's face.

**Blancato** discloses a method and system of capturing an image of an individual and digitally modifying the individual's current hairstyle with various hairstyles that the individual may be interested in having (Column 2 Lines 1 - 17). The image is then modified in order to place the image of the face and the new hairstyle together on a screen (Column 2 Lines 1 – 17). The various modifications are then stored and would obviously be held under file for later dates for when the individual would like to try something new and different.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include **Blancato's** method of storing information concerning various hairstyles interests that an individual would want with **the combination of Greerlings and Amornisiripanitch** so that an automatic notification is sent to an individual for a haircut appointment when the system and method from the **combination of Greerlings and Amornisiripanitch** determines that the required hair length for a specific style matches the expected hair length of a customer.



6. In regard to **claims 4 – 7, Geerlings** discloses a computer system that gathers information, which is stored within 2 databases (Column 2 Lines 18 – 25), about an individual's shopping behavior and times the communication with the individual based the individual's shopping behavior (Column 1 Lines 51 – 56; Column 2 Lines 26 – 30). The first database stores identification and demographics of recipients while the second databases stores desired communication. The system uses the information that was gathered about the individual in order to transmit information at the appropriate time interval that may interest the individual through various communication means (Column 5 Lines 39 - 46; Column 14 Lines 24 – 30).

**Geerlings** discloses that the system, "...tailors the communication accordingly (with respect to content and timing (i.e., when to contact the consumer) (Column 1 Lines 54 – 56)." Moreover, the system determines the appropriate time to contact the individual based on, "...cumulative purchase behavior of a consumer, historic behavior or expected future behavior, or any combination thereof (Column 2 Lines 26 – 30)."

Further still, as best understood by the examiner, **Geerlings** also discloses that necessary information regarding the individual is stored in the database and is accessed when needed, such as retrieving the modified images of the individual that will be attached to the notification. Moreover, an "...Event History Subtable **26** is formed of records indicating the various so-called events **37**...with which a customer has been involved. That is, each record identifies (i) a customer by customer number, and (ii) an event **37c** by event number ("Event NR"). The event number serves as a cross

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reference to a record in the strategy database **21** where the event is predefined by the merchant. (Column 6 Lines 50 – 57).

**Geerlings** fails to disclose the system to be used for:

visiting a hair salon;

calculating the expected length of hair; and

making a hairstyle match with images of a customer's face.

As it has been explained above, **Greerlings** discloses a system and method that allows for an effective means of communicating information to its customers based on stored customer information, regardless of the business (**Col. 3 L. 15 – 17**). That is to say, the flexibility of **Greerlings** method and system allows for any type of business to communicate relevant reminder information based on customer preferences, profile, and past information. For example, were the invention used in a mechanic shop it would have been obvious to one having ordinary skill in the art that there is specific information needed from the customer in order to provide relevant reminder information. Specifically, it is old and well known for vehicles to receive regular maintenance, such as tire rotation, oil change, and etc. As a result, the customer information stored would consist of, but not be limited to, vehicle mileage, date of last service, and normal frequency of service (oil change every 3,000-5,000 miles or 3 months). In regards to a salon, the Examiner asserts that **Greerlings** invention would perform the same function. Specifically, there are a variety of services that a salon performs on a regular basis, such as manicures, waxing, hair cuts, dyeing, and etc. All of these services are occurrences that a customer requests on a regular basis and may require reminders in

order to maintain a specific dye color or hair length, for example. As a result, the customer information would consist of, but not be limited to, how often a customer visits the salon for basic cosmetic requests or for the maintenance of hair color or waxing.

Thus, for at least the above mentioned rationale, it is asserted that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the information stored in the database system of **Greerlings** in accordance with the type of business environment it is being used for in order to properly remind a customer of their next visit. One of ordinary skill in the art would have realized that depending on the type of business in which the invention of **Greerlings** is being applied to it would have been obvious that the stored customer information would be information that is relevant to the type of business, vehicle information for a mechanic and hair information for a salon, for example.

However, **Greerlings** fails to explicitly disclose;

calculating the hair length of the expected next date of the hair cut, the number of days between the previous date of the haircut and the expected next date of visit, and the hair growth rate; and

making a hairstyle match with images of a customer's face.

**Amornisiripanitch** discloses a method and system in which hair length is calculated using a variety of type of information gathered from a user. Specifically, **Amornisiripanitch** discloses a method and system which analyzes, tabulates, and calculates the hair growth rate of an individual then determines the expected length based on a provided time gap. That is to say, **Amornisiripanitch** discloses that it is old

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and well known to calculate an expected hair length when the system and method is provided with the hair growth rate (calculated based on gathered information), the measured length (initial length), and the time gap (date of initial length measured and future measurement date). After all of this information is provided, the system and method then calculates the approximate expected hair length by using the maximum, the minimum, the mode, and the median of the whole area growth rate with standard deviation and variance, since it is old and well known that an individual's hair growth rate is not a constant value (**see at least Col. 4 Lines 27 – 47**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Greerlings** in view of **Amornisiripanitch** to provide and system and method of calculating an expected hair length of an individual in order to better provide up to date information to a customer and allow them to determine whether a hair cut is needed.

However, the **combination of Greerlings and Amornisiripanitch** fails to explicitly disclose:

making a hairstyle match with images of a customer's face.

**Blancato** discloses a method and system of capturing an image of an individual and digitally modifying the individual's current hairstyle with various hairstyles that the individual may be interested in having (Column 2 Lines 1 - 17). The image is then modified in order to place the image of the face and the new hairstyle together on a screen (Column 2 Lines 1 – 17). The various modifications are then stored and would

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obviously be held under file for later dates for when the individual would like to try something new and different.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include **Blancato's** method of storing information concerning various hairstyles interests that an individual would want with **the combination of Geerlings and Amornisiripanitch** so that an automatic notification is sent to an individual for a haircut appointment when the system and method from the **combination of Greerlings and Amornisiripanitch** determines that the required hair length for a specific style matches the expected hair length of a customer.

7. In regards to **claim 8**, **Geerlings** discloses wherein the second database stores indications of desired communication including indications of times for initiating communications and indications of contents of communications. As discussed above one skilled in the art would have found it obvious to use the system disclosed by Geerlings as an effective means of communicating information to its customers to visit a hair salon based on the customer's prior behaviors.

### ***Response to Arguments***

8. Applicant's arguments with respect to **claims 1 and 4 – 8** have been considered but are moot in view of the new ground(s) of rejection.

### **Rejection under 35 USC § 112, first paragraph**

9. Applicant argues that a, "...person of ordinary skill in the art would be able to determine a value for the "hair growth rate" such that an **approximate** hair length at the expected next date of visit can be calculated." However, as discussed above, the

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Examiner asserts that the applicant has claimed an equation that can calculate the **exact** length of an individual's hair based on the following information:

$$\text{Expected hair length} = [\text{Future hair cut date} - (\text{Last hair cut date})], (\text{Hair growth rate}), (\text{Length of hair from last hair cut date})$$

However, the Examiner asserts that the applicant has failed to provide sufficient guidance to properly calculate the expected hair length. That is to say, the applicant has only provided the information needed to calculate the expected hair length, but has failed to disclose how to use this information to calculate the expected hair length.

As discussed in the prior Office Action mailed **January 10, 2008** the Examiner assumed that in order to calculate the expected hair length the following formula was needed:

$$\text{Expected hair length} = \{[(\text{Future hair cut date}) - (\text{Last hair cut date})] * (\text{Hair growth rate})\} + (\text{Length of hair from last hair cut date})$$

However, the Examiner asserts that the hair growth rate is not a constant, but a variable and, as a result, would not make it possible to calculate the expected hair length with the above formula (**see provided NPL About.com: Skin & Beauty**). As a result, the applicant has failed to properly provide sufficient guidance to enable one to carry out the invention. That is to say, the above formula fails to provide the expected

hair length and, as a result, would make it impossible to provide the intended hairstyle to the customer since the expected hair length is unknown.

Therefore, the rejection under **35 USC § 112, first paragraph**, is **maintained**.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found in the PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A./  
Examiner, Art Unit 3689  
8/4/08

/Janice A. Mooneyham/  
Supervisory Patent Examiner, Art Unit 3689